IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s):   Philip Kortum, et al.

Title: FIREWALL SWITCHING SYSTEM FOR COMMUNICATION SYSTEM
           APPLICATIONS

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BOARD OF PATENT APPEALS
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AMENDED BRIEF IN SUPPORT OF APPEAL

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I. REAL PARTY IN INTEREST (37 C.F.R. §41.37(c)(1)(i))

The Real Party in Interest in the present Appeal is SBC Knowledge Ventures, L.P., the assignee, of Patent Application No. 10/605,474, as evidenced by the assignment set forth at Reel 014021, Frame 0463.

II. RELATED APPEALS AND INTERFERENCES (37 C.F.R. §41.37(c)(1)(ii))

With respect to other appeals or interferences that will directly affect, or be directly affected by, or have a bearing on the Board's decision in this appeal, Appellants are not aware of any such appeals or interferences.

III. STATUS OF CLAIMS (37 C.F.R. §41.37(c)(1)(iii))

A.   Total Number of Claims in Application

There are 20 claims pending in the application (claims 1-20).

B.   Status of All the Claims

Claims 1, 12 and 16 are independent claims. According to paragraph 1 of the Final Office Action dated June 27, 2007, the Examiner states that claims 1-20 stand rejected, and are hereby appealed.

C.   Claims on Appeal

There are 20 claims on appeal (claims 1-20).

IV. STATUS OF AMENDMENTS (37 C.F.R. §41.37(c)(1)(iv))

The claims hereby appealed are based on the Amendment filed April 11, 2007. No amendment was offered or entered after the Final Office Action.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER (37 C.F.R. §41.37(c)(1)(v))

The subject matter of Claim 1 can be summarized as follows:

A system is disclosed that includes a computer and an interface that facilitates communications between the computer and a network. The interface is used for selectively determining what type of material content passes between the computer and the network. The interface includes an interface mode adjustment switch that has at least two operating mode positions, which may be manually selected by a user. A controller is coupled to the interface mode adjustment switch and responds according to the position of the interface mode adjustment switch. The interface mode adjustment switch is dedicated for use with the controller in determining the passage of material content between the computer and the interface.

Claim 1 finds support from at least Figures 1 and 2; page 4, paragraph [0018], lines 23-29; page 5, paragraph [0022], lines 14-27; and on page 7, paragraph [0031], lines 19-25, of the specification.

The subject matter of Claim 12 can be summarized as follows:

A system is disclosed that includes a computer and an interface that facilitates communications between the computer and a network. The interface is used for selectively determining what type of material content passes between the computer and the network. The interface includes an interface mode adjustment switch that has at least two operating mode positions including a learning mode, which may be manually selected by a user. A controller is coupled to the interface mode adjustment switch and responds according to the position of the interface mode adjustment switch. The interface mode adjustment switch is dedicated for use with the controller in determining the passage of material content between the computer and the network. The user is able to receive material content from selected sources without requiring the user to make adjustments in the interface when the interface is in the learning mode.

Claim 12 finds support from at least Figures 1, 2 and 5; page 4, paragraph [0018], lines 23-29; page 5, paragraph [0022], lines 14-27; page 7, paragraph [0031], lines 19-25; page 9, paragraph [0040], lines 21-31; and on page 10, paragraph [0043], lines 10-19, of the specification.

The subject matter of claim 16 can be summarized as follows:

A method is disclosed for facilitating communications between a computer and a network using an interface. The interface is used for selectively determining what type of material content passes between the computer and the network. The interface includes an interface mode adjustment switch having at least two operating mode positions. The method further includes selecting an operating mode using the interface mode adjustment switch that is dedicated for use in determining passage of material content between the computer and the interface.

Claim 16 finds support from at least Figure 5; page 4, paragraph [0018], lines 23-29; and page 9, paragraph [0038], lines 12-31, through page 10, paragraph [0041], lines 1-4, of the specification.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL (37 C.F.R. §41.37(c)(1)(vi))

A. Claims 1-11 are rejected under U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,990,591 ("Pearson").

B. Claims 12-15 are rejected under U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,990,591 ("Pearson").

C. Claims 16-20 are rejected under U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,990,591 ("Pearson").

VII. ARGUMENT (37 C.F.R §41.37(c)(1)(vii))

Appellant respectfully appeals each of the rejections applied against all claims now pending.

A. CLAIMS 1-11 ARE ALLOWABLE OVER PEARSON

Appellants traverse the rejections of claims 1-11 under 35 U.S.C. §102(e) as being anticipated by Pearson at page 2, paragraph 2 of the Final Office Action.

1.   Pearson Does Not Teach Every Element of Each of the Claims 1-11.

It is axiomatic that anticipation of a claim under 35 U.S.C. §102(e) can be found only if the prior art reference discloses every element of the claim. *See In re King*, 801 F.2d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986) and *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1458, 221 USPQ 481, 485 (Fed. Cir. 1984). Here, the cited prior art reference, Pearson, does not anticipate claim 1, because Pearson does not disclose every element of claim 1. For example, Pearson does not disclose or suggest a system having an interface including "at least one interface mode adjustment switch having a plurality of physical operating mode positions" or "wherein the at least one interface mode adjustment switch is dedicated for use with the controller to selectively determine passage of material content", as recited in claim 1.

Pearson discloses a system for remotely monitoring the security status of a computer network and remotely configuring communication devices connected to a computer network using an interface that is a <u>server-based configuration program</u> hosted by a front end server at a remote monitoring center. *See* Pearson, column 1, lines 11-13; column 9, lines 20-34; Figure 1. The communication device of Pearson is remotely configured through a several step process requiring a user to first access a website maintained at a remote monitoring center to make a request to initiate a remote configuration of the user's local communication device. *See* Pearson, column 3, lines 38-41. The interface of Pearson is described as "a server-based configuration application program utilized for configuration of users' communication devices, as it would appear on a typical user's computer display screen." *See* Pearson, column 9, lines 20-24. The user electronically configures the security policy for a communication device by pointing to and selecting one of the icons displayed on the user's computer screen by the server-based configuration application, which is then received by the remote monitoring center for processing. *See* Pearson, column 10, lines 64-66; column 11, lines 8-12.

The Final Office Action states:

at least one interface mode adjustment switch having a plurality of physical operating mode positions (see col. 10 lines 52-63 and fig. 4A and 4B, Pearson

discloses a user interface displaying set policies of different modes or levels of communication); and

a controller coupled to said at least one physical interface mode adjustment switch and selectively determining passage of material content between said at least one computer and said at least one interface in response to position of said at least one interface mode adjustment switch wherein the at least one interface mode adjustment switch is dedicated for use with the controller to selectively determine passage of material content (see col.10 line 2 – col. 11 line 20, Pearson discloses a user selectable buttons which determine multiple level of communication security).

See Final Office Action, p. 3, paragraphs 1-2.

In contrast to claim 1, Pearson does not disclose or suggest an interface including "at least one interface mode adjustment <u>switch</u> having a plurality of <u>physical</u> operating mode positions" or "wherein the at least one interface mode adjustment switch is dedicated for use with the controller to selectively determine passage of material content", as recited in claim 1. (Emphasis supplied). In particular, Pearson's interface does not teach an adjustment switch having <u>physical</u> operating mode positions, as recited in claim 1. Instead, Pearson's interface is a <u>server-based configuration application program</u>. *See* Pearson, column 9, lines 20-34. Further, Pearson's server-based application program interface does not teach a switch dedicated for use with a controller to selectively determine passage of material content, as recited in claim 1. Instead, Pearson discloses the use of a server-based application program that is hosted at a remote monitoring center to configure the local communication device using a remote monitoring center controller. *See* Pearson, column 1, lines 11-13; column 9, lines 20-34; Figure 1. Accordingly, Pearson does not disclose or suggest a system having an interface including an interface mode adjustment switch having a plurality of <u>physical</u> operating mode positions, wherein the at least one interface mode adjustment switch is dedicated for use with the controller to selectively determine passage of material content, as recited in claim 1. Thus, Pearson does not teach every element of claim 1. Hence, claim 1 is allowable.

Claims 2-11 depend from claim 1, which Applicants have shown to be allowable. Hence, Pearson fails to disclose at least one element of each of claims 2-11. Accordingly, claims 2-11 are also allowable, at least by virtue of their dependence from claim 1.

B.   CLAIMS 12-15 ARE ALLOWABLE OVER PEARSON

Appellants traverse the rejections of claims 12-15 under 35 U.S.C. §102(e) as being anticipated by Pearson at page 5, paragraph 3 of the Final Office Action.

1.   Pearson Does Not Teach Every Element of Each of the Claims 12-15.

It is axiomatic that anticipation of a claim under 35 U.S.C. §102(e) can be found only if the prior art reference discloses every element of the claim. *See In re King*, 801 F.2d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986) and *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1458, 221 USPQ 481, 485 (Fed. Cir. 1984). Here, the cited prior art reference, Pearson, does not anticipate claim 12, because Pearson does not teach every element of claim 12. For example, Pearson does not disclose or suggest a system having an interface including "at least one interface mode adjustment switch having a plurality of operating mode selections comprising a learning mode selection ... wherein in the learning mode the controller is able to reduce the security level for tasks without requiring a user to make adjustments in said interface", as recited in claim 12.

As discussed above, Pearson discloses a system for remotely monitoring the security status of a computer network and remotely configuring communication devices connected to a computer network using an interface that is a <u>server-based configuration program</u> hosted by a front end server at a remote monitoring center. *See* Pearson, column 1, lines 11-13; column 9, lines 20-34; Figure 1. The user electronically configures the security policy for a local communication device by pointing to and selecting one of the icons displayed on the user's computer screen by the server-based configuration application, which is then received by the remote monitoring center for processing. *See* Pearson, column 10, lines 64-66; column 11, lines 8-12.

The Final Office Action states:

at least one interface mode adjustment switch having a plurality of operating

mode selections comprising a learning mode selection (see col. 1 lines 52-63 and figs 4A and 4B, Pearson discloses a user interface that displays set policies for different modes or levels of communications); and a controller couples to said at least one interface mode adjustment switch, having a plurality of operating mode selections, and selectively determining passage of material content between said at least one computer and said at least one interface in response to said plurality of operating mode selections wherein the learning mode the controller is able to reduce the security level for tasks without requiring a user to make adjustment in the interface (see col. 10 line 52 – col. 11 line 20, Pearson discloses user selectable buttons to determine the security level of communication in a network).

See Final Office Action, p. 5, paragraph 3.

In contrast to claim 12, Pearson does not disclose or suggest an interface including "at least one interface mode adjustment <u>switch</u> having a plurality of operating mode selections comprising a learning mode selection ... wherein in the <u>learning mode</u> the controller is able to reduce the security level for tasks without requiring a user to make adjustments in said interface", as recited in claim 12. (Emphasis supplied). Pearson's interface does not teach an adjustment switch having operating mode positions, as recited in claim 1. Instead, Pearson's interface is a <u>server-based configuration application program</u>. *See* Pearson, column 9, lines 20-34. Further, Pearson's server-based application program interface does not teach a switch having a learning mode so that the controller is able to reduce the security level for tasks without requiring a user to make adjustments in the interface, as recited in claim 12. The Office asserts that this feature is taught by column 1, lines 52-63, and Figure 4A and 4B of Pearson. However, neither the cited portion of Pearson, nor any other portion of Pearson teaches "a plurality of operating mode selections comprising a learning mode selection", as recited in claim 12. In particular, the cited reference does not disclose or suggest a learning mode in which the controller is able to reduce the security level for tasks without requiring the user to make adjustments in the interface, as recited in claim 12. Instead, Pearson discloses three security levels (high, medium, and low) that must be selected by the user using the server-based configuration application program interface. *See* Pearson, column 10, lines 55-60. Accordingly, Pearson does not disclose or suggest a learning mode for an adjustment switch, as recited in claim 12. Thus, Pearson does not teach every element of claim 12. Therefore, claim 12 is allowable.

Claims 13-15 depend from claim 12, which Applicants have shown to be allowable. Hence, Pearson fails to disclose at least one element of each of claims 13-15. Accordingly, claims 13-15 are also allowable, at least by virtue of their dependence from claim 12.

C.   CLAIMS 16-20 ARE ALLOWABLE OVER PEARSON

Appellants traverse the rejections of claims 16-20 under 35 U.S.C. §102(e) as being anticipated by Pearson at page 6, paragraph 4 of the Final Office Action.

1.   Pearson Does Not Teach Every Element of Each of the Claims 16-20.

It is axiomatic that anticipation of a claim under 35 U.S.C. §102(e) can be found only if the prior art reference discloses every element of the claim. *See In re King*, 801 F.2d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986) and *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1458, 221 USPQ 481, 485 (Fed. Cir. 1984). Here, the cited prior art reference, Pearson, does not anticipate claim 16, because Pearson does not teach every element of claim 16. For example, Pearson does not disclose or suggest a method comprising "facilitating communication between at least one computer and a network via at least one interface" and "selecting a material content passage operating mode via at least one physical interface mode adjustment switch that is dedicated for use in selecting the material content passage operating mode", as recited in claim 16.

Pearson discloses a system for remotely monitoring the security status of a computer network and remotely configuring communication devices connected to a computer network using an interface that is a <u>server-based configuration program</u> hosted by a front end server at a remote monitoring center. *See* Pearson, column 1, lines 11-13; column 9, lines 20-34; Figures 1 and 6. The communication device of Pearson is remotely configured through a several step process requiring a user to first access a website maintained at a remote monitoring center to make a request to initiate a remote configuration of the user's local communication device. *See* Pearson, column 3, lines 38-41. The interface of Pearson is described as "a server-based configuration application program utilized for configuration of users' communication devices, as it would appear on a typical user's computer display screen." *See* Pearson, column 9, lines 20-

24. The user electronically configures the security policy for a communication device by pointing to and selecting one of the icons displayed on the user's computer screen by the server-based configuration application, which is then received by the remote monitoring center for processing. *See* Pearson, column 10, lines 64-66; column 11, lines 8-12.

> The Final Office Action states:
>
> Claims 16-20 do not teach or define any new limitations above claims 1-15 and therefore are rejected for similar reasons.
>
> *See* Final Office Action, p. 6, paragraph 4.

In contrast to claim 16, Pearson does not disclose or suggest a method of "selecting a material content passage operating mode via at least one <u>physical</u> interface mode adjustment switch that is dedicated for use in selecting the material content passage mode", as recited in claim 16. (Emphasis supplied). In particular, Pearson's interface does not teach selecting an operating mode using a <u>physical</u> interface adjustment switch, as recited in claim 16. Instead, Pearson's interface is a <u>server-based configuration application program</u>. *See* Pearson, column 9, lines 20-34. Further, Pearson's server-based application program interface does not teach a switch dedicated for use in selecting the material content passage mode, as recited in claim 16. Instead, Pearson discloses the use of a server-based application program that is hosted at a remote monitoring center to configure the local communication device using a remote monitoring center controller. *See* Pearson, column 1, lines 11-13; column 9, lines 20-34; Figures 1 and 6. Accordingly, Pearson does not disclose or suggest a method of "selecting a material content passage operating mode via at least one <u>physical</u> interface mode adjustment switch that is dedicated for use in selecting the material content passage mode", as recited in claim 16. Thus, Pearson does not teach every element of claim 16. Hence, claim 16 is allowable.

Claims 17-20 depend from claim 16, which Applicants have shown to be allowable. Hence, Pearson fails to disclose at least one element of each of claims 17-20. Accordingly, claims 17-20 are also allowable, at least by virtue of their dependence from claim 16.

VIII. CLAIMS APPENDIX (37 C.F.R §41.37(c)(1)(viii))

The text of each claim involved in the appeal is as follows:

1. (Previously presented) A material content setting adjustment system comprising:

at least one computer;

at least one interface facilitating communication between said at least one computer and a
network;

at least one interface mode adjustment switch having a plurality of physical operating
mode positions; and

a controller coupled to said at least one interface mode adjustment switch and selectively
determining passage of material content between said at least one computer and
said at least one interface in response to position of said at least one interface
mode adjustment switch, wherein the at least one interface mode adjustment
switch is dedicated for use with the controller to selectively determine passage of
material content.

2. (Original) A system as in claim 1 wherein said at least one interface is an interface
selected from at least one of a gateway, a hub, a high-speed communication interface, and a
router.

3. (Original) A system as in claim 1 wherein said controller is contained at least partially
within said at least one computer.

4. (Original) A system as in claim 1 wherein said controller is contained at least partially
within said at least one interface.

5. (Original) A system as in claim 1 wherein said plurality of operating mode positions
correspond with a plurality of operating modes of said controller.

6. (Original) A system as in claim 1 wherein said controller has a plurality of operating

modes that comprise modes selected from at least two of a blocking mode, a learning mode, a partially blocking mode, and a non-blocking mode.

7. (Original) A system as in claim 1 wherein said at least one interface mode adjustment switch has a firewall activated position and a firewall deactivated position.

8. (Original) A system as in claim 1 wherein said interface is coupled to said network via a connection selected from at least one of a high-speed communication connection, a digital subscriber line connection, a communications-unity antenna television connection, a satellite connection, a wireless connection, a broadband cable connection, analog connection, and an Internet connection.

9. (Original) A system as in claim 1 wherein said at least one interface mode adjustment switch is a switch selected from at least one of a toggle switch, a rotary switch, a push button switch, a rocker switch, a slide switch, and a keylock switch.

10. (Original) A system as in claim 1 wherein said at least one interface mode adjustment switch is hardware-based.

11. (Original) A system as in claim 1 wherein said at least one interface mode adjustment switch is mounted in at least one of said at least one computer, said at least one interface, and at least one housing.

12. (Previously presented) A material content setting adjustment system comprising:
at least one computer;
at least one interface facilitating communication between said at least one computer and a
  network;
at least one interface mode adjustment switch having a plurality of operating mode
  selections comprising a learning mode selection; and
a controller coupled to said at least one interface mode adjustment switch, having a

plurality of operating mode selections, and selectively determining passage of material content between said at least one computer and said at least one interface in response to said plurality of operating mode selections, wherein in the learning mode the controller is able to reduce the security level for tasks without requiring a user to make adjustments in the interface.

13. (Original) A system as in claim 12 wherein said at least one interface mode adjustment switch is software actuated.

14. (Original) A system as in claim 12 wherein said plurality of operating mode positions have an onscreen representation.

15. (Original) A system as in claim 12 wherein status of said at least one interface mode adjustment switch is continuously shown on said at least one computer desktop.

16. (Previously presented) A method of adjusting passage of material content within a communication system comprising:

 facilitating communication between at least one computer and a network via at least one interface;

 selecting a material content passage operating mode via at least one physical interface mode adjustment switch that is dedicated for use in selecting the material content passage operating mode; and

 determining passage of material content between said at least one computer and said at least one interface in response to said selected material content passage operating mode.

17. (Original) A method as in claim 16 further comprising: selecting a learning mode; and learning allowable material content.

18. (Original) A method as in claim 17 wherein learning allowable material content

comprises operating in a non-blocking mode or a partially blocking mode.

19. (Original) A method as in claim 17 wherein learning allowable material content is performed for a predetermined length of time.

20. (Original) A method as in claim 16 further comprising operating in at least one mode selected from a blocking mode, a learning mode, and a non-blocking mode.

IX. EVIDENCE APPENDIX (37 C.F.R §41.37(c)(1)(ix))

[None]

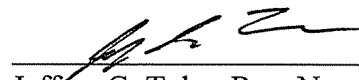## X. RELATED PROCEEDINGS APPENDIX (37 C.F.R §41.37(c)(1)(x))

[None]

XI. CONCLUSION

For at least the above reasons, all pending claims are allowable and a notice of allowance is courteously solicited. Please direct any questions or comments to the undersigned attorney at the address indicated. Appellants respectfully requests reconsideration and allowance of all claims and that this patent application be passed to issue.

Respectfully submitted,

Dated this 6th day of March, 2008.

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